

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
FEBRUARY 19, 1998**

MEMBERS PRESENT: Dean Trefethen, Chairperson, Bill Colbath, Vice-Chairperson, John Murphy, and Robert Mullan

STAFF PRESENT: Thomas Clark, Building Official, Bruce Woodruff, Planning Dept.

ITEM #1: NEW BUSINESS

- A. The annual nominations for, and elections of, Zoning Board Officers will be held. This was tabled from the meeting of January 15, 1998

MOTION:

John Murphy made the motion to postpone the elections until the end of the meeting.
Bill Colbath seconded the motion.
3 in favor and 1 opposed. (Dean Trefethen opposed)

- B. Approval of minutes for the regular meeting of January 15, 1998

MOTION:

Bob Mullan made the motion to accept the minutes of January 15, 1998.
John Murphy seconded the motion.
U/A

ITEM #2

Old Business – None

ITEM #3

Z 98-1, Mario & Laurrie Malizia, 22 Birch Dr., a/k/a Assessor's Map I, Lot 83-J, Zoned R-12 requests a variance from (1) the provisions of Article V, Section 170-16 to construct a one-story front addition onto a single family dwelling within approximately twenty-seven (27) feet of a front property line as it abuts a street where a minimum of thirty (30) feet is required; and (2) the provisions of Article X, Section 170-41.A to enlarge a non-conforming structure.

Dean Trefethen advised the applicants that there are only four (4) members present and the applicants have a choice to be heard this evening or be tabled until the next meeting.

Applicant agreed to continue.

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Mario Malizia – His family is growing and they have a need to expand the living area of their home. He would like to expand at the front of the house and it will match with the edge of the carport, however, there is not enough setback. He reviewed his application. He feels that the hardship is the fact that the house was built prior to the current regulations and also this expansion will be consistent with the surrounding neighbors. He cannot expand to the back of the house because there is not a lot of land and there is also a stream back there.

Dean Trefethen – Asked if Mr. Malizia went to the Assessor's Office to do his research on assessing the surrounding properties.

Mario Malizia – Yes.

Dean Trefethen – Asked if he plans to maintain the same roofline.

Mario Malizia – Yes.

John Murphy – Asked where the stream is in relation to the house and the rear setback.

Mario Malizia – Approximately 25-27 feet from the house.

John Murphy – Questioned the wall of the carport coming into the setback

Tom Clark – It does not necessarily need to go further into the setback. The wall can be tucked under the roof so that it does not go further out.

Mario Malizia – Will not be changing the roof at all.

Bill Colbath – Questioned the parking that will be lost.

Mario Malizia – He will still have a large amount of his driveway plus a small area to the side that he can use.

MOTION:

Bill Mullan made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

PUBLIC HEARING OPENED

Bruce Woodruff – Referred to the Zoning Change draft that each Board member received that refers to this type of case. If this change takes place this type of variance will become unnecessary. For this

reason the Planning Department supports this request. The applicant could add to the rear but he would be too close to the stream. Today's regulations state that he would have to be 50 feet away from that stream. The Conservation Commission may grant a Conditional Use to construct a rear addition but both the Planning Dept. and the Conservation Commission would recommend that a variance be granted for a front addition rather than getting into a 50 foot Conservation District for the stream.

PUBLIC HEARING CLOSED

FIVE CRITERIA:

Dean Trefethen reminded the Board that they are now using the new Rules of Procedure in that they will vote individually on the five criteria and then the Chair will make a summary of the decision based on the findings of those five criteria.

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The property has been subjected to a change in zoning setbacks making any expansion under today's rules difficult if not impossible. Expansion to the rear is not feasible due to the conservation zone.
2. It is the Board's conclusion that the variance will deliver substantial justice. It will allow reasonable expansion that is similar to surrounding properties.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. The spirit and intent is to regulate density and this proposal does not significantly change the density of the properties of the neighborhood.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The applicant has shown that other properties in the direct neighborhood that have done similar improvements enjoy higher evaluations.
5. It is the Board's conclusion that the variance will not be contrary to public interest. There is no significant change to the footprint of the house and no further encroachment towards the public right of way.

Therefore, based on the forgoing it is ordered that the application for the variance be granted without conditions.

ITEM #4

Z 98-2, Heidelberg Harris, 121 Broadway, a/k/a Assessor's Map 26, Lot 6, Zoned I-1, requests a variance from the provisions of Article IX, Section 170-32J(2)(d) to install an accessory wall sign with an area of approximately one hundred seventy-one (171) square feet where a maximum of sixty (60) square feet is allowed.

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Bill Colbath advised the Board that he has a conflict of interest in this case and will have to step down.

Dean Trefethen advised the applicant that there will be only 3 Board members and advised them that they can wait for the next meeting or continue tonight.

The applicant agreed to continue tonight.

William Smillie – Representing Heidelberg Harris. Due to the extensive renovations, a larger sign is necessary. He presented the Board with colored drawings. There are three entrances. The building is some 300 feet from the road. The hardship is the massive size of the building and the wall sign will be located over the front of the main entrance of the building. He reviewed the application.

Justin Eisfeller, Corporate Facilities Director for Heidelberg Harris – The sign will be to identify the corporate facility. Also one abutter did inquire of the location of the sign which will be away from them because they are on the Oak Street side.

John Murphy – What are we being asked to give relief to.

Tom Clark – The applicant was originally looking for the wall sign and then petition for a variance for the freestanding sign. After the receipt of the application it was changed. The sign regulations do allow for a free standing sign and an accessory wall sign, but regardless of the building size the maximum accessory wall sign is only 60 square feet. Since the permit was issued for the free standing sign the variance is for an accessory wall sign in addition to a free-standing sign which goes beyond that maximum of 60 square feet.

Tom Clark – Asked Mr. Smillie if the company would be seeking signage for the Oak Street side.

Mr. Smillie – Only directional sign for the Oak Street side.

MOTION:

John Murphy made the motion to accept the case.

Bob Mullan seconded the motion.

U/A

PUBLIC HEARING OPENED

The Planning Department supports this request. Although the ordinance seems to be adequate in most circumstances, it does not in the case of Heidelberg Harris. The hardship in this case is that the sign ordinance does not fit this property and facility. The Planning Department recommends these two conditions: (1) That the property owner give up any rights to construct any signs, other than directional signs, on the Oak Street side, and (2) that the temporary vinyl sign be removed.

Justin Eisfeller – We do plan on removing the vinyl sign but can't say that we plan on removing it permanently. We would like to keep it open so that at some future date a smaller sign could be placed in this area.

Tom Clark – This poses a problem for the Board because the ordinance allows a freestanding sign and one accessory wall sign. Your application is for a larger one but still you are not looking for a variance for more than one sign. So any additional signage would require a petition for a variance.

PUBLIC HEARING CLOSED

John Murphy – Doesn't see a hardship but feels comfortable using unnecessary restriction clause. However, even though the applicant is a large company, it does not give them any more rights than anyone else.

Bob Mullan – Also has a problem with the hardship but in this case feels that it would be less obtrusive.

Dean Trefethen – Has no problems what so ever with this request.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The proposal is less intrusive, on the whole, than either of the permitted options. It would be needlessly restrictive to force compliance to the ordinance due to the massive size of the building and property area.
2. It is the Board's conclusion that the variance will deliver substantial justice. It will allow completion of a renovation project that enhances the overall look of the property and the neighborhood.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. The spirit and intent is to prevent overbearing signage and this proposal complies with that goal.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The sign is part of an overall renovation project that has aesthetically improved the neighborhood.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. It will allow proper identification of a very large structure.

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Therefore, based on the forgoing, it is ordered that the application for a variance be granted with the following conditions:

MOTION:

John Murphy made the motion to accept the Planning Staff's recommendations of (1) no additional signs on Oak St. other than directional ones, and (2) the current vinyl wall sign will be removed.
Bob Mullan seconded the motion.

U/A

ITEM #1:

- A. The annual nominations for, and elections of, Zoning Board Officers.

Dean Trefethen – Advised the Board that he has reapplied for his membership to the Board and is willing to continue as Chairperson if the Board approves.

MOTION:

John Murphy made the motion to elect Dean Trefethen as Chairperson and Bill Colbath as Vice-Chairperson.

Bob Mullan seconded the motion.

U/A

MOTION:

John Murphy made the motion to adjourn.

Bill Colbath seconded the motion.

U/A